

Abdul Haque Vs. Pathumma

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Court : Kerala

Decided On : Sep-27-2004

Reported in : 2005(1)KLT980

Judge : K.A. Abdul Gafoor and; K.K. Denesan, JJ.

Acts : Kerala Local Authorities (Prohibition of Defection) Act, 1999 - Sections 2, 3 and 3(1)

Appeal No. : W.A. No. 1349 of 2004

Appellant : Abdul Haque

Respondent : Pathumma

Advocate for Def. : K.T. Sankaran,; R. Rajesh Kormath,; A. Meena,;

Advocate for Pet/Ap. : T.R. Ramachandran Nair, Adv.

Disposition : Appeal dismissed

Judgement :

K.A. Abdul Gafoor, J.

1. One and the same person is the appellant. He is the second respondent in the respective Writ Petitions. He moved Ext.P1 petition before the State Election Commission to disqualify the writ petitioners, in terms of Section 3 of the Kerala

Local Authorities (Prohibition of Defection) Act, 1999 (hereinafter referred to as the Act), The writ appellant and writ petitioners along with 12 others were elected to the Managing Committee of Kannamangalam Grama Panchayat. At the time of election there were two coalitions namely, Vikasana Munnani and Janakeeya Munnani. Political parties named Indian Union Muslim League (IUML) and Communist Party of India (Marxist) (CPI(M)) were constituents of the former. Certain other parties including Indian National Congress (I) (INC(I)) were the constituents of the latter. The political party named IUML fielded four candidates in its official Symbol and five independent candidates with different symbol. The writ appellant was as well as the writ petitioners belong to those independent candidates supported by Muslim League. It is an admitted case that soon after the election, coalition named Vikasana Munnani disintegrated and each constituent functioned as different parties. While so, Muslim League party introduced a no confidence motion against the Vice President of the Panchayat who belonged to CPI(M). All the Muslim League members and the independent members including writ appellant and writ petitioners supported the said resolution. At that juncture, the Vice President resigned. There was new election to the office. An official candidate of the Muslim League was elected on 25.7.2001.

2. Thereafter, there was an attempt to move a No Confidence Motion against the writ appellant and the newly elected Vice President on 4.1.2003. That motion was successful, because the writ petitioners voted in favour of that motion. Thereupon the appellant filed a petition before the State Election Commission to disqualify them holding that they were deemed to be members of the IUML and had voluntarily left that party to attract Section 3(a) of the Act. This was challenged by the writ petitioners separately in W.P.(C) No. 37347/03 and W.P.(C) No. 37300/03. The Writ Petitions were allowed and Ext.P3 was quashed. It was thereupon these Writ Appeals have been filed.

3. It is contended by the Writ Appellants that all of them including writ petitioners contested as candidates to a coalition. They were supported by Muslim League. So they shall have to be deemed to be members belonging to a political party namely, IUML. The writ petitioners had moved No Confidence Motion against the Vice President without concurrence of IUML. Thus they have voluntarily given up

the membership of IUML to attract Clause (a) of Section 3(1) and they have thus become disqualified to continue as members of panchayat committee.

4. Going by the averments contained in Ext.P1 petition and the factum that the members of IUML moving a No Confidence Motion against the Vice President belonging to CPI(M) a constituent of Vikasana Munnani, it has become conclusively proved that such coalition had ceased to exist. In such circumstances, the writ petitioners cannot be termed as members of coalition. They can be termed as independent candidates supported by any political party depending upon situations.

5. The writ petitioners were only supported by Muslim League. They were not official candidates of the Muslim League. In other words, they have not been set up by Muslim League as candidates in the election. But that party only supported them.

6. In order to attract any of the provision to disqualify a candidate, he or she shall come within the provision of Clause a, b or c of Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999. Sub-section (c) provides, if an independent member not belonging to any coalition, joins any political party or coalition; he shall be disqualified from being a member of that local authority. Ext.P1 petition does not reveal that writ petitioners had joined a different coalition or any other political party. Therefore, Clause (c) does not apply to the facts of this case.

7. Clause (b) of Section 3 provides that if an independent member belonging to any coalition withdraws from such coalition or joins any political party or any other coalition, or if such a member, contrary to any direction in writing issued by a person or authority authorised by the coalition in its behalf in the manner prescribed, votes or abstains from voting, he will be disqualified. It is not proved in this case that any authority has given any whip to the writ petitioners to vote in a particular manner. It is stated that the appellant had served a whip on the writ petitioners to vote in his favour against the No Confidence Motion. But he could not either before the Election Commission or before this Court produce any document to show that he had authority to issue such whip. Therefore, Clause (b)

also does not apply to this case.

8. The remaining clause to be examined is Clause (a) of Section 3 of the Act. It describes a situation if a member of local authority belonging to any political party voluntarily gives up his membership of such political party. It is submitted that going by the explanation to Section 3 of the Act the writ petitioners are to be deemed to the members of political party, namely IUML as they were supported by IUML. Only if this contention is accepted, Ext.P3 can be sustained.

9. Merely because a political party had supported a candidate, that candidate cannot be termed as set up by that political party. For a political party to set up an individual, as its candidate two things have to be satisfied. One is that the political party has to accept him as its candidate and the other is that the candidate also has to accept that political party as if he belongs to it. In this case the writ petitioners had never accepted them to be fielded as candidates of Muslim League, On the other hand, Muslim League had only supported their candidature. A letter said to be given by the writ petitioners to a party cannot be sufficient to term them as candidates of that party or candidate set up by that party. Even going by the averments in Ext.P1, the writ petitioners were only independent candidates supported by Muslim League. Therefore, they will not come within the provisions of Explanation to Section 3 of the Act to style them as members belonging to any political party and they are never set up in the Panchayat election as candidates of any particular political party.

10. At this juncture, the difference between the explanation to Section 2(ii) and explanation to Section 3 has to be adverted to. The former describes of candidates in an election with support of a political party to deem them any members of political party or a coalition, whereas the latter describes about a political party by which he was set up as candidate for election. There is a wide difference between the two. When admittedly the writ petitioners were only independent candidates supported by IUML, they cannot be deemed to be members of the political party. They have never been set up as candidates by that political party to attract the said explanation.

11. Therefore, none of the provisions under Section 3 of the Act is attracted to declare the writ petitioners as disqualified in terms of Section 3 of the Act. As the coalition has ceased to exist, there arise no question of application of explanation to Section 3(ii) of the Act. Necessarily, we find no reason to interfere with the impugned judgment setting aside Ext.P3.

Writ Appeals fail, dismissed.

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